

Cooperative Compliance: Healthcare Fraud and Abuse

Health care reform efforts have justifiably tried to attack fraud and abuse, which costs upwards of \$226 billion annually. House provisions attempt to reduce health care fraud and impose sanctions under the Medicare program, and President Obama's health care reform plan would create an independent commission of doctors and medical experts to identify waste, fraud, and abuse in the health care system.

In addition, President Obama recently signed into law the Fraud Enforcement and Recovery Act, which makes significant changes to the False Claims Act by expanding liability for making false or fraudulent claims to the federal government and requires those who violate it to reimburse the federal government for the costs of any civil action to recover penalties or damages. This effort adds to traditional fraud and abuse laws as well as the controversial Recovery Audit Contractor system that we in California have had the luck-good or bad-to be included in since its pilot status, now to be nationalized by next year.

Yet these efforts focus on reactive approaches that penalize fraud and abuse after the fact. In addition, it is no secret to health care attorneys that the rules and regulations governing fraud and abuse are lengthy, complex, and at times ambiguous while the cost of compliance is growing. Most ethical health care organizations desire to engage in legal and appropriate business practices, but are challenged with the costs of attempting to create compliance policies and procedures while continuing to do business during some of the worst economic times in history.

But there is a business case for creating such ethical and appropriate compliance programs. From one perspective, they promote integrity and financial stability of government health care programs that ultimately benefit these businesses through payment for services. And from another, they proactively ensure business activities will not incur the expensive law enforcement investigations that attempt to ferret out fraud and abuse. If health care organizations and government could be proactive in identifying, correcting, and preventing activities that may be interpreted as fraudulent, fraud and abuse could be reduced, leaving more resources available for ethical and legally operating entities as

well as for patient care.

However, compliance programs are as numerous as there are businesses. If standardized approaches for compliance were available and had the seal of approval from government authorities, the costs of adopting them would be reduced. Instead of guessing as to what kinds of approaches should be put into place, a model compliance program for health care business with basic characteristics for all sectors and specific characteristics for individual health care sectors would promote their adoption. Government should also promote these standardized approaches by rewarding these businesses who adopt these programs with a presumption of compliance with fraud and abuse laws.

For example, basic characteristics of such standardized programs across health care industries could include a Compliance Officer to develop and oversee the compliance program, comprehensive training for all staff on fraud and abuse laws such as the Antikickback Statute, Stark Self-Referral Prohibitions, False Claims Act, fraud alerts, federal fraud and abuse hotlines, corrective action protocols, employee sanctions, as well as an internal, electronic transaction, self-audit program performed periodically and whose results are accessible by federal authorities for research and, if necessary, enforcement purposes.

More specific characteristics of the standardized compliance program could include aspects critical to the specific health care sector. For example, in the clinical laboratory industry, issues relating to medical necessity for services, billing, coding, standard orders, marketing, and other concerns uniquely relating to this business could also be put into place.

Importantly, some models for use already exist that can serve as the basis for government and industry creation of these policies. Previous OIG efforts have resulted in dissemination of model compliance programs, such as the one for clinical laboratories resulting from the prosecution of National Health Laboratories in the 1990s. With cooperative collaborations, jointly created government-business compliance programs that are periodically updated will benefit both. Using this method, proactive compliance efforts can detect and reduce fraud and abuse at the outset, and allow more effective and efficient monitoring, and allow for field observations by ethical businesses in a cooperative dialogue between businesses and government regulators.

In addition, these cooperative, standardized compliance programs would benefit the ethical health care business by providing an infrastructure for timely information on operations and an opportunity for corrective action. These businesses that adopt such systems employing electronic audit systems should also be deemed eligible for stimulus money currently earmarked under the American Recovery and Reinvestment Act as incentive payments for meaningful

use of electronic records.

Of course, as important, public insurance programs would benefit significantly from such a cooperative approach. Standardized compliance programs would make after-the-fact audits easier to perform. Electronic systems for internal self-audits can provide significant information on a much more timely basis in the event investigations are needed. As well, feedback on current concerns can be discussed earlier with more industry data resulting in cooperative and educational approaches for corrective action rather than the years later expensive and punitive processes that are currently the standard.

Fraud and abuse of our nation's largest health insurance programs must be addressed if we are to protect and secure the integrity of these critical programs. Doing so will allow health care stakeholders to provide the highest quality of health care to patients and ensure that these programs will be available in the future to Americans when they need them most. Part of the solution is to ensure that health care organizations play a part in the ethical and legal provision of care to patients in this country working with government authorities interested in these same outcomes.

Creating a standardized compliance program that allows these health care organizations to participate in stopping fraud and abuse in a cooperative system with government rewards those ethical businesses and proactively promotes a corporate culture of accountability and responsibility. This is the right thing to do for the benefit of the limited financial health care resources available for care, the sustainability of these public health insurance programs, and the patients all health care organizations seek to serve.



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Thriving in a Downward Economy

On Oct. 1, 2009, the Harvard Business School Alumni Association of Orange County hosted a panel discussion recognizing the outstanding performance of Knobbe Martens Olson & Bear LLP. Knobbe Martens is the third largest intellectual property law firm in the United States and the largest law firm in Orange County. The panel discussed why the firm has continued to thrive despite adverse economic conditions, and how Knobbe Martens differs from other intellectual property-focused law firms. They found that Knobbe Martens has succeeded not by aiming to improve the bottom line, but by providing superior legal service-and bottom line success follows naturally. The panel concluded that Knobbe Martens' success can be attributed to fiscal responsibility, attorney recruitment, the firm's collegial culture, a client-oriented compensation model, delivering client satisfaction, and being an active and generous member of the Orange County business community.



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First, Knobbe Martens maintains a liquid reserve cushion. Despite the tax burden of carrying a liquid reserve, the partnership has decided that the benefits of stability and insurance against economic instability outweigh the costs. By contrast, other historically successful firms have gone bankrupt during the current downturn because they were highly leveraged.

Second, Knobbe Martens has no inactive partners. Retired partners have no shares of the firm. Senior partners pass ownership of the firm to the next generation, instead of selling their stake to the highest bidder. This is in contrast to many other firms, where a few top people own the entire firm.

Knobbe Martens has a unique approach to attorney recruitment and retention. Many law firms hire a much larger number of associates than they expect will make partner. A significant number of these new hires leave after two or three years. In contrast, Knobbe Martens anticipates that every hire will make partner. At Knobbe Martens, attorneys become part owners of the firm after only six years, significantly less than most other law firms. Accordingly, during the hiring process, the firm considers whether the person is someone they would like to work with in the long run. This approach has been a success - Knobbe Martens attrition rates are incredibly low for the business and morale is very strong.

Knobbe Martens hires the right people, not just the available people. The firm almost exclusively hires people with a strong technical background so that the needs of the firm's high tech clients can be met. One of the firm's keys to success is retaining the good talent it develops. The difficult and complicated nature of intellectual property law means that the attorneys hired and trained by Knobbe Martens are the heart and soul of the firm. Indeed, many Knobbe Martens partners are now nationally known experts in their field, having written books and articles in their area of specialty, spoken at legal symposia, served on leading boards and committees, and appeared on lists of top lawyers.

Firm culture is not merely a buzzword at Knobbe Martens. Knobbe Martens places a very high value on the firm's collegial culture, and works hard to maintain it. Knobbe Martens hires only a small number of later-

als, who must demonstrate excellence in the practice of law, and have a personality that meshes with firm culture. Rather than take over established law offices in other cities, Knobbe Martens prefers to open new offices with home-grown lawyers who are willing to relocate.

At Knobbe Martens, most management decisions are made by consensus. This ensures that all partners are on board with major decisions, such as opening a new office or managing the firm's finances. The partnership's efforts to reach consensus on decisions minimizes disagreements and hard feelings among the partners, and contributes to its unique collegial firm culture.

Knobbe Martens has a billable hour requirement for both associates and partners that is lower than the industry average. This allows Knobbe Martens lawyers to live a more balanced, happier life. It also allows Knobbe Martens lawyers to work during their most productive time of the day. The firm's philosophy is that lawyers are better able to produce work of consistently high quality if they are not expected to work grueling hours for months or years on end. Another benefit of the reduced workload is the "spare capacity" it creates. When a short-term need requires urgent attention, Knobbe Martens attorneys are better situated to handle it - unlike lawyers at other firms who are already working long hours to meet their billing requirements.

At most other firms, a partner with a large number of clients will make more money than another partner of similar seniority who has fewer clients. In contrast, at Knobbe Martens revenue is shared between the partners with little regard to the number of clients managed or brought in by a particular partner. Accordingly, there is not an incentive for partners at Knobbe Martens to hoard clients to enhance their own compensation. Instead, partners at Knobbe Martens freely delegate excess work or new clients to other partners - seeking the best technical and/or legal expertise for the particular client matters. In this way, the firm maximizes productivity across the partnership and enhances client value. Because of the client-oriented compensation model, the partners at Knobbe Martens are not in competition with each other - they cooperate to deliver superior legal services to every client.

Delivering client satisfaction by providing superior legal services is the core of Knobbe Martens' business strategy. Clients who are deciding which elite law firm to hire often place a heavy emphasis on the hourly rate they will be charged. Knobbe Martens believes that while hourly rates are not irrelevant, they do not reflect the total cost of a legal service. Knobbe Martens' hourly rates are slightly below the market rate, but the firm delivers the best possible outcome for their clients time after time. Total cost to achieve the best possible outcome for a client is the best way to compare law firms, and by this rubric, Knobbe Martens is best in its class. Most firm business comes from repeat clients who are very happy with Knobbe Martens' work.

Knobbe Martens is an active member of the Orange County community. The firm has an extensive pro bono practice (involving mostly intellectual property related cases) and sponsors business organizations in Orange County helping people to network and find jobs.

In conclusion, Knobbe Martens stands out from the competition by consistently delivering superior legal services to its clients. As a business, the firm attributes its success to conservative fiscal management, attorney recruitment, the firm's collegial culture, a client-oriented compensation model, delivering client satisfaction, and being an active and generous member of the Orange County business community.



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